IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9606 of 2004
To
SPECIAL CIVIL APPLICATION No. 9612 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KARSHANJI MATHURJI THAKOR - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1,
MR PR ABICHANDANI, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 21/09/2005

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

This group of seven petitions involve common question of law as well as facts and hence they are heard together and now they are being disposed of by this common judgment.

2. Petitioners' lands situated at village Seraisa, Taluka Kalol, District Gandhinagar have been acquired by resorting to the provisions of the Land Acquisition Act [hereinafter referred to as 'the Act'] by respondents along with the lands of other persons. Some of the land owners approached the District Court by filing references since the compensation awarded by the Special Land Acquisition Officer was found to be inadequate. The District Court enhanced the compensation. In view of the same, the present petitioners subsequently made applications under section 28-A of the Act to the Special Land Acquisition Officer. The petitioners made separate applications in respect of their lands and those applications were rejected by the Special Land Acquisition Officer by orders of different dates. Details of the lands of the petitioners, dates of the impugned orders as well as numbers of the petitions are stated below :-

SCA No.	Date of impugned	Survey nos.

Order.

9606/2005	22-26/8/2003	494, 506, 502
9607/2005	22-26/8/2003	504
9608/2005	22-26/8/2003	484
9609/2005	26/8/2003	604
9610/2005	22-26/8/2003	496
9611/2005	22-26/8/2003	564
9612/2005	22-26/8/2003	513

These applications have been rejected by him solely on the ground that along with the applications the certified copy of the award of the District Court has not been produced.

3. Mr. Patel, learned advocate for the petitioners has submitted before us that the ground on which the applications have been rejected is against the principle of law laid down by this Court in various decisions. In support of his say, he has placed reliance on the judgment rendered by us in Special Civil Application No. 8588 of 2004, in the case of PATEL PRAHLADBHAI CHUNILAL v/s. STATE OF GUJARAT. We have perused that judgment. It supports the view canvassed by Mr. Patel. In the said judgment, while placing reliance on other

decisions, we have observed as under :-

> "We have heard Mr. Patel for the petitioner. He has submitted that the impugned order is erroneous since the petitioner is not required to file certified copy of the judgment and award of the District Court along with the application under Section 28-A of the Act. In support of his say, he has relied on the judgment of the Division Bench of this Court dated April 1, 2005 passed in Special Civil Application No. 2316 of 2004. By relying on the decision rendered in the case of CN PATEL vs. SPECIAL LAND ACQUISITION OFFICER reported in 2005 (1) GLH at page 88, the Division Bench has quashed and set aside the impugned order of that petition which was also challenged on the ground that the Special Land Acquisition Officer had wrongly dismissed the application under section 28-A of the Act for want of certified copy of the judgment and award of the District Court. According to Division Bench, it was not necessary to do so. However, it clarified that at the time of hearing of the application if the petitioner was called upon to produce the certified copy of the judgment and award on which he wanted to rely, he should place on record the certified copy thereof. In the submission of Mr. Patel the impugned order of respondent no. 2 is, therefore, required to be quashed and set aside.
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> We are in total agreement with the submission of Mr. Patel as well as the decision cited before us. In fact, we ourselves have taken the similar view in the judgment in the case of SHAH ATULBHAI VADILAL vs. STATE OF GUJARAT & Ors. in Special Civil Application No. 1475 of 2005 also. It is not in dispute that the application of the petitioner has been disposed of solely on the ground that the certified copy of the judgment and award is not

produced. Respondent no. 2 could not have dismissed the application on this ground. The said order is, therefore, required to be quashed and set aside and it is hereby quashed and set aside. We now remand the case to respondent no. 2 with a direction that he shall decide the same on its merits, after examining all the relevant record. The petition is, therefore, allowed. Rule made absolute with no order as to costs."

4. In view of the same, we also quash and set aside the impugned orders of respondent no. 2 – Special Land Acquisition Officer and remit the matters back to him for his reconsideration. He will be at liberty to examine the merits of each case including the issue of limitation and decide it in accordance with law as early as possible. Petitions are allowed. Rule made absolute with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.